

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

October 2, 2013 at 10:00 a.m.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 09-26800-D-11 JAE CHOI AND KI HYUN  
UST-2

MOTION TO CONVERT CASE FROM  
CHAPTER 11 TO CHAPTER 7 AND/OR  
MOTION TO DISMISS CASE  
9-4-13 [191]

Tentative ruling:

This is the motion of the United States Trustee ("UST") for conversion or dismissal of this Chapter 11 case. The debtors had a Chapter 11 plan confirmed on August 10, 2010, and have been operating as re-vested debtors since that time. The UST's motion asserts in that the debtors have failed to file required post confirmation quarterly reports and have failed to pay required post confirmation quarterly fees. Thus, the debtors are in default of their plan. Accordingly, the UST asserts that there is cause for conversion or dismissal pursuant to Bankruptcy Code § 1112(b)(4). The debtors have filed a response and concede that they are in default of their plan and request that the case be dismissed rather than converted.

As the debtors have conceded that there is cause for conversion or dismissal, the court is required to assess and determine whether conversion or dismissal is in the best interest of the creditors and parties in interest. At the hearing the court will poll interested parties to determine whether conversion or dismissal is appropriate. The court will hear the matter.

2. 13-30301-D-7 CROSSROADS FAMILY FINAL MOTION TO SELL  
JRR-1 CARE, INC. 9-3-13 [8]

3. 13-27002-D-7 RICHARD ROBERTS MOTION TO EXTEND DEADLINE TO  
TAA-1 FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
8-30-13 [21]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of the debtor is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtor. Moving party is to submit an appropriate order. No appearance is necessary.

4. 12-34306-D-7 JACK/BARBARA MCKARSON MOTION TO COMPROMISE  
BLL-3 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DINWIDDIE-HINES  
CONSTRUCTION, INC.  
9-3-13 [68]

5. 13-28109-D-7 JOJO/MARIAFE GUINTU MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON 9-4-13 [15]  
VS.

**Final ruling:**

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

6. 12-34516-D-7 RICHARD HARVEY AND WENDY  
DNL-2 LUENENBERG HARVEY

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH RICHARD STEPHEN  
HARVEY AND WENDY LUENENBERG  
HARVEY, PFC INSURANCE CENTER,  
INC., ANGELIQUEA PASSAGLIA AND  
RANDAL FLETCHER  
8-20-13 [52]

**Final ruling:**

This is the trustee's motion for approval of a compromise. Parties-in-interest Henry J. Reichers, Inc., dba River Valley/Stirnman Insurance Agency, and Ben Stirnman have filed a timely opposition. However, the court is not prepared to hear the motion at this time for the following reasons.

First, pursuant to Fed. R. Bankr. P. 9014(b) and 2002(a)(3), the moving party was required to serve both debtors. The moving party served the debtor and the joint debtor at the same address - that of the debtor, whereas the joint debtor has, and from the beginning of this case has had, a different address. She was not served at that address. (The notice of hearing was separately served on certain of the parties listed on the PACER matrix; however, on the copy of the matrix attached to the proof of service, the names and addresses of both debtors are crossed out.)

Second, the moving party continued the hearing from September 18, 2013 to this date by way of an amended notice of hearing. The proof of service of the amended notice evidences service on the debtors (at debtor Richard Harvey's address), the debtors' attorney, and one of the two parties requesting special notice in this case. However, the "attached address sheets" referred to in the proof of service are not attached; thus, there is no evidence the amended notice was served on all creditors, as required by Fed. R. Bankr. P. 2002(a)(3).

The court will continue the hearing to October 16, 2013, at 10:00 a.m., the moving party to file and serve a notice of continued hearing (pursuant to LBR 9014-1(f)(2)) on the debtors and all creditors no later than October 2, 2013, and to serve the motion and supporting declaration and exhibits (along with the notice of continued hearing) on the joint debtor at her own address no later than October 2, 2013. The moving party shall file proofs of service no later than October 4, 2013.

The hearing will be continued by minute order. No appearance is necessary on October 2, 2013.

7. 13-30716-D-7 MARY FLORES

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
8-15-13 [5]

8. 13-23621-D-7 PACIFIC ASSET  
MANAGEMENT, INC.

CONTINUED ORDER TO SHOW CAUSE  
6-20-13 [33]

**CASE DISMISSED 4/18/13**

**Final ruling:**

The hearing on this order to show cause is continued to November 27, 2013 at 10:00 a.m. pursuant to the order entered on September 23, 2013. No appearance is necessary on October 2, 2013.

9. 13-27725-D-7 KRISTIAN HARTMAN  
WAC-1

CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 7 TO CHAPTER  
13  
7-9-13 [41]

10. 13-28826-D-7 JUAN/KELLY LOPEZ  
PD-1  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-29-13 [14]

**Final ruling:**

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

11. 13-27128-D-7 ANTHONY AYALA  
PD-1  
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-20-13 [13]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on August 28, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

12. 13-31129-D-7 DIANE MILLER  
MET-1  
MECHANICS BANK VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
9-4-13 [15]

**Final ruling:**

This matter is resolved without oral argument. This is Mechanics Bank's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

13. 13-29030-D-7 WILLIAM/JANET CHENG

MOTION TO DISMISS CASE  
8-29-13 [37]

**Tentative ruling:**

This is the motion of debtors William Cheng and Janet Cheng (the "debtors") to dismiss this chapter 7 case. The chapter 7 trustee and creditors Dennis C. Brenning and the Dennis C. Brenning Trust (the "Brenning creditors") have filed opposition. For the following reasons, the motion will be denied.

The debtors contend debtor William Cheng did not sign the petition commencing this case. Instead, they claim, debtor Janet Cheng filled in William Cheng's name on the signature line on the petition. (The debtors do not dispute that Janet Cheng signed her own name on the petition.<sup>1</sup>) They contend that because William Cheng did not sign the petition, the petition is not valid, and the two of them have "agreed" that "the petition is not valid without his signature." William Cheng and Janet Cheng Motion to Dismiss the Chapter 7 Petition, filed August 29, 2013 (the "Motion"), at 2:2-3. In opposition to the trustee's earlier motion to shut down their business, the debtors filed a declaration of Mr. Cheng, in which he testifies he did not sign the petition, he was not aware of the petition, and he did not have any knowledge of the "chapter 7 petition filing of 7-5-2013." Declaration of William Cheng, filed September 9, 2013, DN 53, at 1:21.

The court will accept for the sake of argument only, without deciding, that Mr. Cheng did not sign the petition. That does not end the inquiry, however. See Lebbos v. Schuette (In re Lebbos), 2008 Bankr. LEXIS 4731, \*16 (9th Cir. BAP 2008) [rejecting the theory that a forged signature of the debtor on the petition requires dismissal in circumstances where other evidence indicates the debtor consented to the filing]. In cases in which a chapter 7 debtor claimed she did not sign the petition, the Ninth Circuit Bankruptcy Appellate Panel has held that "the real

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<sup>1</sup> The Brenning creditors correctly point out that if the case had been filed by Janet Cheng alone, the debtors' motel, which, according to the Brenning creditors, is in Janet Cheng's name, would still be an asset of the bankruptcy estate, including William Cheng's community property interest, if any. 11 U.S.C. § 541(a)(2).

question . . . is whether the Debtor intended to file for protection under chapter 7 . . . .” Rodriguez Mendez v. Salven (In re Rodriguez Mendez), 367 B.R. 109, 120 (9th Cir. BAP 2007); accord Lebbos, 2008 Bankr. LEXIS 4731, at \*16.

In this case, although the debtors claim Mr. Cheng did not sign the petition, they do not claim he did not intend the petition to be filed. They do not claim he did not sign the Statement of Social Security Number(s) and the Verification of Master Address List that were filed with the petition.<sup>2</sup> As the trustee points out, the petition was accompanied by a Certificate of Counseling evidencing that almost six months earlier, Mr. Cheng had received the credit counseling required for the filing of a chapter 7 petition. The debtors do not deny that Mr. Cheng signed the means test, schedules, statement of financial affairs, statement of compliance with credit counseling requirement, statement of intention, and certification of completion of post-petition instructional course, all filed July 19, 2013. Both debtors appeared at the meeting of creditors and answered questions; both affirmed that all the information in their documents filed with the court was true and correct. They did not inform the trustee that Mr. Cheng had not signed the petition or that they wanted the case dismissed, even when the trustee asked them whether, on the documents they had filed, there were any errors or omissions they wished to bring to his attention.<sup>3</sup> While Mr. Cheng may not have known of the filing of the petition on July 5, 2013, which is really all his declaration says, the evidence clearly supports the conclusion that he intended the petition to be filed, and that he intended to be a debtor in the case.

It is also clear that Janet Cheng intended to file a chapter 7 petition, although she now claims to have done so without consulting an attorney, while she was in “total panic” and suffering from “post dramatic stress disorder” (Motion, at 3:5-6), and “without any knowledge or understanding of what is Chapter 7 is.” (Motion, at 3:7-8). Accepting for the sake of argument, without determining, that all of this is true, the conduct of both debtors both before and after the petition was filed persuades the court unequivocally that both of them had some reason for invoking the bankruptcy court’s jurisdiction, and that they intended to file the petition.<sup>4</sup> Both debtors obtained the required credit counseling just under six months before the petition was filed. Thus, it appears they knew not only of the requirement to obtain the counseling but also that they needed to file their petition within 180 days from the date they obtained it. Both signed the Statement of Social Security Number(s) and Verification of Master Address List four days before the date the petition was filed. Both obtained the required personal financial management instruction one week after the petition date, and both signed all the required schedules and statements ten days after the petition date.

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<sup>2</sup> The court is no expert on handwriting, but observes that the purported signatures of William Cheng on those two documents are much closer to his signature on his declaration filed September 9, 2013 than they are to the printed “signature” Mrs. Cheng claims to have placed on the petition.

<sup>3</sup> Mrs. Cheng responded, “Maybe later,” and “I don’t know now.” Mr. Cheng did not respond.

<sup>4</sup> The suggestion in the motion is that they had discovered in early July of this year that certain creditors had taken the debtors’ funds on deposit with a court using an invalid order. (The petition was filed July 5, 2013.)

Neither debtor mentioned at the meeting of creditors that Mr. Cheng had not signed the petition or that Mrs. Cheng had filed the petition in a state of panic and without knowing what chapter 7 is. It was not until after the meeting of creditors, at which the trustee informed them he intended to get a court order requiring them to close their motel business, and after he filed a notice advising creditors to file proofs of claim due to the possible recovery of assets that the debtors filed this motion. In fact, one week after the meeting of creditors, the debtors filed a motion to terminate the trustee's employment of counsel in this case, in which they did not mention their present contention that Mr. Cheng had not signed the petition, although they did suggest that both of their signatures had been forged by the defendants in state court litigation, and that various documents had been falsified in other ways. Both debtors signed the motion to terminate counsel's employment, in which they requested the trustee and the court investigate the defendants in the state court litigation, and requested the court deny certain wrongful claims; that is, in which they invoked this court's jurisdiction by seeking its help. In the motion, the debtors stated: "THE COURT MUST NOT DENY PLAINTIFFS' REQUEST TO VERIFY THEIR SIGNATURES ON ANY RULING. We the plaintiffs respectfully do request the court to let plaintiffs verify the bogus signature before any ruling."<sup>5</sup> Thus, the subject of false signatures was on the debtors' minds when they filed the motion, yet they did not mention their present contention that Mr. Cheng had not signed the petition.

The court concludes that both debtors fully intended to file the chapter 7 petition commencing this case, and fully intended to be debtors in the case, but have simply "found bankruptcy inhospitable" (see Hickman v. Hana (In re Hickman), 384 B.R. 832, 836 (9th Cir. BAP 2008)), and would like to "extricate [themselves] by having the case dismissed." See id. This is not a sufficient basis on which to dismiss a chapter 7 case. Id. at 842 ["When a debtor's choice to commence a chapter 7 case backfires, a debtor is not entitled to escape by awarding himself a dismissal either by declining to perform his statutory duties or by recanting the commitment to have debtor-creditor relations adjusted in equitable proceedings."].

Finally, "[a] case will not be dismissed on the motion of a debtor if such dismissal would cause 'some plain legal prejudice' to a creditor." Hickman, 384 B.R. at 840 (citations omitted). The debtors, who have the burden of persuasion on this issue (id. at 841), have not addressed the issue at all. However, the various motions and oppositions the debtors have filed in this case show a long history of litigation, including allegations by the debtors of forgery and fraud, and challenges to the claims of creditors. Citing court documents attached to the creditor's proof of claim in this case, the Brenning creditors point out that at least one creditor, PLM Lender Services, Inc., has a sizable claim based on state court awards of sanctions against the debtors. For this reason and others, the Brenning creditors have made a plausible case that if there is a chance that the claims of creditors are to be paid it is more likely if the case remains open than if it is dismissed.

The court notes also that for all of the creditors listed on their schedules, the debtors claim the debts are contingent, unliquidated, and disputed. They have also clearly failed to list all of their assets. In fact, other than a single piece

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<sup>5</sup> William Cheng and Janet [Cheng] Request the Court for a Motion Hearing to Terminate the Suntag Law Firm, Dana A. Suntag to Represent Geoffrey Richards, Chapter 7 Trustee, filed August 20, 2013, at 7:11-14 (emphasis in original).

of real property listed on their Schedule A, the debtors listed no other assets at all. Every line item on their Schedule B contains the handwritten word "None." In answer to the question in their Statement of Financial Affairs requiring them to list all suits and administrative proceedings to which they have been parties within the prior year, the debtors checked the box "None," although one of their first actions in this bankruptcy case was to criticize the trustee's counsel for continuing upcoming hearings in a state court action in which the debtors are the plaintiffs. All of these factors weigh heavily against the debtors in the determination of this motion.

For the reasons stated, and considering the totality of the circumstances (see Lebbos, 2008 Bankr. LEXIS 4731, at \*14), the court concludes the debtors have not established that cause exists for dismissing the case, and the motion will be denied. The trustee has requested an order requiring the debtors to amend their schedules to list all creditors and authorizing the trustee to obtain their credit reports so he can identify all creditors. The trustee requested this relief in his opposition to this motion, and the debtors have not had sufficient opportunity to respond; therefore, these requests will be denied without prejudice.

The court will hear the matter.

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|-----|-----------------------------|------------------|------------------------|
| 14. | 12-41831-D-7                | DAVID RUSKOFISKY | MOTION FOR RELIEF FROM |
|     | PD-1                        |                  | AUTOMATIC STAY         |
|     | THE BANK OF NEW YORK MELLON |                  | 8-23-13 [16]           |
|     | VS.                         |                  |                        |

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on April 8, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

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|-----|---------------|-----------------------|----------------------------|
| 15. | 11-46032-D-11 | CROSS CHECK SERVICES, | CONTINUED MOTION TO MODIFY |
|     | JGD-11        | LLC                   | CHAPTER 11 PLAN            |
|     |               |                       | 6-18-13 [197]              |



16. 11-46032-D-11 CROSS CHECK SERVICES, CONTINUED MOTION FOR OBJECTION  
JGD-13 LLC TO ENTRY OF ORDER CLOSING CASE  
7-10-13 [210]
17. 11-46032-D-11 CROSS CHECK SERVICES, CONTINUED MOTION TO CONVERT  
LR-1 LLC CASE FROM CHAPTER 11 TO CHAPTER  
7 AND/OR MOTION TO DISMISS CASE  
6-4-13 [185]
18. 13-25432-D-7 RUSSEL OCAMPO MOTION FOR RELIEF FROM  
ASW-1 AUTOMATIC STAY  
BANK OF AMERICA, N.A. VS. 8-27-13 [28]

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on August 6, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

19. 13-27037-D-7 JACQUELINE HENDERSON CONTINUED MOTION TO COMPEL  
DSH-1 ABANDONMENT  
8-1-13 [27]

**Final ruling:**

This is the debtor's motion to compel abandonment of a 2005 Chevy Malibu. The hearing was continued to allow the moving party to notice all creditors of the motion. (Previously, only the chapter 7 trustee, the U.S. Trustee, and the party holding the lien on the vehicle were served.) In its ruling for the initial hearing, the court stated that a notice of continued hearing would need to be filed and served no later than September 18, 2013, and that the notice would need to be pursuant to LBR 9014-1(f)(1) or (f)(2), at the moving party's election, depending on whether 14 days' or 28 days' notice was given.

On September 13, 2013, the moving party served a notice of continued hearing on all creditors, thus providing them with only 19 days' notice of this continued hearing. However, the notice purported to be a notice under LBR 9014-1(f)(1); that is, it stated that parties opposing the motion must file written responses no less than 14 days before the hearing date. The 14th day before the continued hearing date was September 18, 2013, just five days after the notice of continued hearing was served. Thus, the notice of continued hearing did not comply with LBR 9014-1(f)(1) or (f)(2) or with the court's September 4, 2013 ruling.

As a result of this notice defect, the motion will be denied by minute order. No appearance is necessary.

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|-----|-------------------------|------------------|------------------------|
| 20. | 13-28146-D-7            | CLIFFORD KOEKOEK | MOTION FOR RELIEF FROM |
|     | MRG-1                   |                  | AUTOMATIC STAY         |
|     | HSBC BANK USA, N.A. VS. |                  | 8-30-13 [12]           |

**Final ruling:**

This matter is resolved without oral argument. This is HSBC Bank USA, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

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|-----|--------------------------|-----------------------|------------------------------|
| 21. | 13-29648-D-7             | ROBBIE VILLANUEVA AND | MOTION FOR RELIEF FROM       |
|     | RDW-1                    | MARLO MEDRANO         | AUTOMATIC STAY AND/OR MOTION |
|     | PATELCO CREDIT UNION VS. |                       | FOR ADEQUATE PROTECTION      |
|     |                          |                       | 9-4-13 [13]                  |

**Final ruling:**

This matter is resolved without oral argument. This is Patelco Credit Union's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

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| 22. | 13-24251-D-7 | LARRY/LAURA HAMILTON | MOTION TO COMPROMISE           |
|     | SLF-3        |                      | CONTROVERSY/APPROVE SETTLEMENT |
|     |              |                      | AGREEMENT WITH LARRY MARVIN    |
|     |              |                      | HAMILTON AND LAURA BURCIO      |
|     |              |                      | HAMILTON                       |
|     |              |                      | 9-4-13 [35]                    |

**Final ruling:**

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9<sup>th</sup> Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

23. 12-41158-D-7 ROBERTO/CONSOLACION MOTION TO ABANDON  
MDM-1 BAUTISTA 8-30-13 [97]

**Final ruling:**

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

24. 12-41158-D-7 ROBERTO/CONSOLACION MOTION FOR RELIEF FROM  
PD-1 BAUTISTA AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 8-23-13 [90]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

25. 13-27860-D-7 TERRI MCCLAIN MOTION TO REDEEM PERSONAL  
EJS-1 PROPERTY  
8-23-13 [13]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to redeem personal property is supported by the record. As such the court will grant the motion to redeem personal property and the debtor is to pay the redemption amount to Patelco Credit Union on or before October 31, 2013. Moving party is to submit an appropriate order. No appearance is necessary.

26. 09-29162-D-11 SK FOODS, L.P. MOTION FOR ASSIGNMENT ORDER  
10-2017 SH-2 9-4-13 [216]  
SHARP ET AL V. FRED SALYER  
IRREVOCABLE TRUST ET AL

**ADV. CASE CLOSED 2/14/13**

**This matter will not be called before 10:45 a.m.**

CASE DISMISSED 5/3/11

**Final ruling:**

The hearing on this order to show cause is continued to November 27, 2013 at 10:00 a.m. pursuant to the order entered on September 23, 2013. No appearance is necessary on October 2, 2013.

28. 12-38166-D-11 STEVE SIMMONS AND SUSAN  
UST-1 DOMEIER-SCHAEFER

MOTION TO CONVERT CASE FROM  
CHAPTER 11 TO CHAPTER 7 AND/OR  
MOTION TO DISMISS CASE  
8-19-13 [114]

**Tentative ruling:**

Steve Simmons and Susan Domeier-Schaefer (the "debtors") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Code") on October 11, 2012. The debtors' petition indicates that they are a small business debtor as defined in Code § 105(51)(D). As a small business debtor, the debtors were required to file a plan of reorganization within 300 days of the petition and, further, said plan was to be confirmed not later than 45 days after it was filed. Code §§ 1121(b) and 1129(e). These timelines can only be extended pursuant to Code § 1121(e)(3).

The debtors filed a combined Chapter 11 plan and disclosure statement on March 27, 2013 (the "Plan"), this being within the 300-day window following the petition date. The Plan came on for confirmation hearing on July 24, 2013 and at that time confirmation was denied. The debtors have not obtained an extension of the deadlines set out in Code §§ 1121(b) and/or 1129(e). Since denial of confirmation of the Plan the debtors have taken no action in regard to filing or prosecuting a subsequent plan of reorganization.

The United States Trustee "UST") has filed a motion to dismiss or convert the debtors' Chapter 11 case. The UST asserts that there is cause for dismissal or conversion because the debtors are now statutorily precluded from filing, and seeking confirmation of, a plan pursuant to Code §§ 1121(e)(2) and 1129(e). The debtors have filed an opposition to the motion asserting that because they initially filed a plan within the 300-days following the petition date, they have complied with the time limitation of Code § 1121(e). The debtors totally fail to address the time restriction imposed by Code § 1129(e) and offer no legal authority or support for their position.

The statutory sections in play here are specific and clear. Code §§ 1121(e) and 1129(e) require that a debtor file a plan within 300 days of the petition date and that any such plan must be confirmed within 45 days thereafter unless extensions are given pursuant to § 1121(e)(3). The debtors have not complied with these time deadlines, nor have they obtained an extension for these deadlines. Thus, at this point the debtors are precluded from filing and seeking confirmation of a new plan. Accordingly, the court finds there is cause for dismissal or conversion pursuant to Code § 1112(b)(4)(J).

As the court has found cause for conversion or dismissal, it will seek input from parties in interest to determine which is in the best interest of creditors and the estate. The court will hear the matter.

29. 13-28268-D-7 HAROLD RAWLS MOTION TO DISMISS CASE  
UST-2 9-3-13 [21]
30. 13-25869-D-7 NISHELLE FEWELL CONTINUED TRUSTEE'S MOTION TO  
JRR-1 DISMISS FOR FAILURE TO APPEAR  
AT SEC. 341(A) MEETING OF  
CREDITORS  
6-11-13 [20]
31. 13-22972-D-7 THOMAS SMITH MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON 8-30-13 [54]  
VS.

**Final ruling:**

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

32. 13-22972-D-7 THOMAS SMITH MOTION TO ABANDON  
TAA-1 8-29-13 [50]

**Final ruling:**

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

33. 13-26373-D-7 APRIL FLORES

MOTION TO REOPEN CHAPTER 7  
BANKRUPTCY CASE AND TO VACATE  
DISMISSAL OF CASE  
9-3-13 [28]

**DISMISSED 8/1/13 AND CLOSED  
8/19/13**

34. 12-42175-D-7 WILLIAM/MELIDA BAUMIESTER  
OAG-1

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
8-28-13 [53]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

35. 12-39878-D-7 DAVID/RENEE SMITH  
DRE-3

MOTION TO AVOID LIEN OF GRANITE  
COMMUNITY BANK, N.A.,  
PREMIERWEST BANK, CALMAT CO.  
AND COLONIAL PACIFIC LEASING  
CORPORATION  
8-23-13 [100]

36. 12-40778-D-7 LILLY ALFONSO  
PD-1  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-27-13 [67]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on July 12, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

37. 13-29379-D-7 LUIS GARCIA  
EAT-1  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-30-13 [14]

**Final ruling:**

This is Federal National Mortgage Association's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that it foreclosed on the real property that is the subject of this motion pre-petition. Movant further asserts that as a result of this pre-petition foreclosure sale the debtor and/or estate only have a possessory interest in the property.

As Movant has established it foreclosed on the property pre-petition and the debtor has only a possessory interest in the property, the court finds cause for granting relief from stay. Accordingly, relief from stay will be granted under Code § 362(d)(1) and, as the debtor's and/or estate's only interest in the property is possessory, the court will waive FRBP 4001(a)(3) by minute order.

No appearance is necessary.

38. 13-31379-D-12 DAVID/DENEILLE LIND

STATUS CONFERENCE RE: CHAPTER  
12 VOLUNTARY PETITION  
8-29-13 [1]

**Tentative ruling:**

This is the initial status conference in this chapter 11 case. The order setting this status conference required the debtors to serve the order and their status report on, among others, the holders of the 20 largest unsecured claims. The debtors' schedules filed in this case show they have fewer than 20 unsecured creditors; thus, all should have been served. However, the debtors filed their schedules three weeks after their petition was filed, and the schedules include at least six unsecured creditors who were not listed on the debtors' master address list. As a result, although the debtors served all the creditors on the master address list, they did not serve those six creditors. Further, because the debtors did not amend the master address list, those six creditors have not received the Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines, and will not be able to attend the meeting of creditors, scheduled for October 2, 2013.

The court intends to conduct a preliminary status conference and then continue the hearing to allow the debtors to correct these defects. The court will hear the matter.

39. 13-29280-D-7 JOYCE SIMMONS

APPLICATION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
9-5-13 [14]

40. 13-27281-D-7 CHARLOTTE MATHEWS  
PD-1  
HSBC BANK USA, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-21-13 [15]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on September 18, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

41. 13-25683-D-7 TAMMY TICE  
JCW-1  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-3-13 [20]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on August 19, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

42. 11-34093-D-7 BONNIE THURMAN  
PD-1  
  
OCWEN LOAN SERVICING, LLC  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-23-13 [22]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on September 19, 2011 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.



43. 13-30595-D-7 LISA WARD

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
8-12-13 [5]

44. 13-28697-D-7 ASHOT SHIBOYAN  
MDE-1  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-29-13 [16]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

45. 13-31597-D-11 FREDRICK HODGSON

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
9-3-13 [1]

46. 12-33698-D-11 2 ANTIOCH, LLC  
12-2705 JKB-6  
2 ANTIOCH, LLC V. ANTIOCH  
LOAN, LLC ET AL

MOTION BY JULIAN K. BACH TO  
WITHDRAW AS ATTORNEY  
8-23-13 [32]

47. 12-33698-D-11 2 ANTIOCH, LLC  
JKB-5

MOTION BY JULIAN K. BACH TO  
WITHDRAW AS ATTORNEY  
8-23-13 [125]

48. 13-31598-D-11 WOODBRIDGE AT PORTOLA,  
INC.

STATUS CONFERENCE VOLUNTARY  
PETITION  
9-3-13 [1]

49. 13-23812-D-7 DANIEL/LINDA SAMERA  
SCR-1

MOTION TO AVOID LIEN OF CHASE  
BANK USA, N.A.  
9-10-13 [18]

**Final ruling:**

This is the debtors' motion to avoid an alleged judicial lien held by Chase Bank USA, N.A. (the "Bank"). No party-in-interest has filed opposition. However, that does not necessarily entitle the moving parties to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Having examined the notice of hearing and the merits of the motion, the court will deny the motion.

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

Since there must be a judicial lien for the court to avoid under § 522(f)(1)(A), the moving parties must demonstrate that one actually exists. The debtors' declaration states that prior to the commencement of the case, the Bank recorded a judgment lien against the debtors' real property located at a particular address in Vacaville, California. Although the motion states that a copy of the abstract of judgment is included in the exhibits filed with the motion, no such copy was filed. Accordingly, the debtors' assertion that there is a judgment lien is hearsay, and the debtors have not met the requirements for avoiding a judicial lien under 11 U.S.C. § 522(f)(1)(A). See LBR 9014-1(d)(6), requiring every motion to be accompanied by evidence establishing its factual allegations and demonstrating that the moving party is entitled to the relief requested.

Second, the notice of hearing was insufficient to provide notice to the Bank that the Bank is the target of the motion. The notice of hearing does not mention the Bank at all.

Third, the notice of hearing purports to be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required); however, it also states that (1) if a party mails a response to the court for filing, he or she must mail it early enough so the court will receive it no less than 14 days before the date of the hearing, and (2) if a party does not take these steps, the court may grant the motion, in some circumstances without even conducting an actual hearing. Both of these phrases contradict the very plain provision of the local rule that the notice of hearing state whether or not written opposition must be filed (see LBR 9014-1(d)(3)); both of these phrases may tend to inhibit parties-in-interest from appearing at the hearing. The reference to opposition being received by the court no less than 14 days before the hearing date also contradicts LBR 9014-1(f)(1), which requires that a motion requiring such opposition must be made on 28 days' notice, whereas this motion was made on only 22 days' notice. Finally, the notice of hearing states that the hearing will take place in Suite 3-200, which is incorrect.

Fourth, the proof of service does not adequately evidence service on the trustee and the United States Trustee. The proof of service states that the moving parties served the trustee and the United States Trustee "By ECF Email," which does not comply with the court's local rules. The court cannot determine whether the moving parties served those parties by e-mail or relied on the court's CM/ECF system (the so-called "free look") for service. If the moving parties served those parties by e-mail, the proof of service is insufficient because it does not state the e-mail addresses at which the parties were served, as required by LBR 7005-1(d)(3). If the moving parties relied on the court's CM/ECF system, the applicable rules do not permit service in that manner. See Fed. R. Civ. P. 5(b)(3), authorizing service via the court's transmission facilities only where authorized by local rule; LBR 7005-1(d), not authorizing service by such means.

As a result of these service, notice, and evidentiary defects, the motion will be denied by minute order. No appearance is necessary.

50. 13-23812-D-7 DANIEL/LINDA SAMERA  
SCR-2

MOTION TO COMPEL ABANDONMENT  
9-11-13 [22]

**Final ruling:**

This is the debtors' motion to compel the trustee to abandon certain real property. The motion will be denied for the following reasons.

First, the moving parties failed to serve the chapter 7 trustee, the United States Trustee, and the creditor added to the debtors' Schedule D by amendment filed September 11, 2013. Second, the notice of hearing purports to be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required); however, it also states that (1) if a party mails a response to the court for filing, he or she must mail it early enough so the court will receive it before the date of the hearing, and (2) if a party does not take these steps, the court may grant the motion, in some circumstances without even conducting an actual hearing. Both of these phrases contradict the very plain provision of the local rule that the notice of hearing state whether or not written opposition must be filed (see LBR 9014-1(d)(3)); both of these phrases may tend to inhibit parties-in-interest from appearing at the hearing. The notice of hearing also states that the hearing will take place in Suite 3-200, which is incorrect.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

51. 12-39434-D-7 ANTHONY/PAMELA BOSSERMAN  
BLC-1

MOTION TO AVOID LIEN OF WELLS  
FARGO BANK, N.A.  
9-16-13 [75]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Wells Fargo Bank, N.A. (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) by certified mail to the attention of its counsel who has filed a request for special notice in this case ("Counsel"); and (2) by first-class mail to the Bank with no attention line. The first method was insufficient, because, although Counsel's request for special notice in this case specifically states that the Bank requests that service of process in any contested matter or adversary proceeding be made to Counsel, subd. (1) of Rule 7004(h) explicitly provides that service on an FDIC-insured institution's attorney who has appeared in a case must be by first-class mail, not certified mail.

The second method was insufficient because the rule expressly requires that service on an FDIC-insured institution, such as the Bank, be made by certified mail to the attention of an officer (Rule 7004(h)), whereas here, service was made by first-class mail to no one's attention.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

52. 12-39434-D-7 ANTHONY/PAMELA BOSSERMAN MOTION TO AVOID LIEN OF CAPITAL  
BLC-2 ONE SMALL BUSINESS  
9-16-13 [81]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Capital One Small Business ("Capital One"). The motion will be denied because the moving parties failed to serve Capital One in strict compliance with Fed. R. Bankr. P. 7004, as required by Fed. R. Bankr. P. 9014(b). The moving parties served Capital One by certified mail to the attorney who obtained its abstract of judgment. This was insufficient because there is no evidence that attorney is authorized to accept service of process on behalf of Capital One in bankruptcy contested matters. If Capital One is an FDIC-insured institution, the moving parties were required to serve it by certified mail to the attention of an officer (and only an officer, not a managing or general agent or agent for service of process). Rule 7004(h). If Capital One is not an FDIC-insured institution, the moving parties were required to serve it by first-class mail to the attention of an officer, managing or general agent, or authorized agent for service of process. Rule 7004(b)(3). Either way, the moving parties failed to properly serve Capital One.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

53. 12-39434-D-7 ANTHONY/PAMELA BOSSERMAN MOTION TO AVOID LIEN OF  
BLC-3 KARIANNE MORGAN AND/OR MOTION  
TO AVOID LIEN OF MATTHEW MORGAN  
9-16-13 [87]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Karianne Morgan and Matthew Morgan (the "Morgans"). The motion will be denied because the moving parties failed to serve the Morgans in strict compliance with Fed. R. Bankr. P. 7004(b)(1), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Morgans by certified mail to the attorney who obtained their abstract of judgment. This was insufficient because there is no evidence that attorney is authorized to accept service of process on behalf of the Morgans in bankruptcy contested matters. Pursuant to Fed. R. Bankr. P. 7004(b)(1), the moving parties were required to serve the Morgans by first-class mail (see preamble to Rule 7004(b)) to their dwelling house or usual place of abode or to the place where they regularly conduct a business or profession. The moving parties did not serve the Morgans in this fashion; thus, they did not comply with Rule 7004(b)(1).

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

54. 12-37335-D-11 ISMAEL/MARIA GUILLEN MOTION TO DISMISS CASE  
MRL-10 9-10-13 [125]

**Final ruling:**

This case was dismissed by order entered September 20, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

55. 13-27037-D-7 JACQUELINE HENDERSON  
DSH-3

MOTION TO REDEEM O.S.T.  
9-17-13 [49]

**Final ruling:**

This is the debtor's motion to redeem a 2005 Chevrolet Malibu from a lien held by Santander for a one-time payment of \$2,412. The motion was brought pursuant to an order shortening the time for notice. By the order, the court approved service of the motion by September 16, 2013; the debtor complied. However, the notice of hearing expressly stated that anyone who did not want the court to approve the redemption or who wanted the court to consider their views must file and serve written opposition no less than 14 days before the hearing date. The notice also stated that if parties did not take this step, the court might decide that no one opposed the motion and grant the motion, without even conducting an actual hearing.

Thus, the notice purported to require written opposition to be filed and served by September 18, 2013, two days after the motion was served, a deadline that was virtually impossible to meet. The notice also likely discouraged parties-in-interest from appearing at the hearing if they did not have time to file written opposition.

As a result of this notice defect, the motion will be denied by minute order. No appearance is necessary.

56. 13-28549-D-7 MICHAEL LANDSEM

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-12-13 [32]

57. 12-37060-D-7 ROYA NESVA  
SCR-1

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
8-22-13 [32]

**Final ruling:**

This is the debtor's motion to compel the trustee to abandon certain real property. The hearing was continued to permit the moving party to correct certain service and notice defects. Instead, the moving party filed a new motion for the same relief. As a result of the filing of the new motion, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

**Final ruling:**

This is the debtor's second motion to compel the trustee to abandon certain real property. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court would ordinarily entertain opposition, if any, at the hearing. However, in this instance, the motion will be denied.

The hearing on the moving party's first motion was continued to allow the moving party to serve the trustee and the United States Trustee, and to notice all creditors of the continued hearing using language in compliance with the court's local rule. Specifically, the ruling on the first motion stated:

The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required), and shall not include the language used by the moving party in the original notice of hearing (1) to the effect that if a party mails a response to the court for filing, he or she must mail it early enough so the court will receive it before the date of the hearing, or (2) to the effect that if a party does not take these steps, the court may grant the motion, in some circumstances without even conducting an actual hearing. Both of these phrases contradict the very plain provision of the local rule that the notice of hearing state whether or not written opposition must be filed (see LBR 9014-1(d)(3)); both of these phrases may tend to inhibit parties-in-interest from appearing at the hearing.

The moving party did not file a notice of continued hearing. Instead, the moving party filed this new motion; the motion was served on September 17, 2013, thus giving parties-in-interest 15 days' notice of the hearing. Except for the hearing date in the caption, the language of the notice of hearing is identical to the language in the notice of hearing on the original motion; that is, the notice includes the very language the court directed the moving party to exclude from its notice of continued hearing on the first motion. For the same reasons as with the first notice of hearing, the court finds that the notice of hearing of this new motion does not comply with the local rule, which does not require that written opposition, if any, be mailed in time to reach the court before the date of the hearing, and which does not provide that motions brought on less than 28 days' notice will ever be granted without the court conducting an actual hearing.

The notice is defective for the additional reason that it states the hearing will take place at 501 I Street - Suite 3-200, which is incorrect.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

59. 09-29162-D-11 SK FOODS, L.P. MOTION TO COMPROMISE  
SH-230 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH WELLS FARGO  
BANK, N.A. AND LYNNE SALYER  
9-16-13 [4461]

**This matter will not be called before 10:45 a.m.**

60. 09-29162-D-11 SK FOODS, L.P. CONTINUED MOTION FOR ENTRY OF  
10-2014 SH-16 DEFAULT JUDGMENT AND/OR MOTION  
SHARP ET AL V. SALYER ET AL FOR SUMMARY JUDGMENT  
4-10-13 [647]

**This matter will not be called before 10:45 a.m.**

61. 13-30271-D-7 CHEREE MILLWARD ORDER TO SHOW CAUSE - FAILURE  
13-2277 TO PAY FEES  
MARTIN V. MILLWARD 9-16-13 [6]

62. 13-31791-D-7 JASON/NATASHA WARNER MOTION TO COMPEL ABANDONMENT  
DAO-1 9-18-13 [11]



63. 13-21199-D-7 JAMES SCOTT  
DNL-9

MOTION TO SELL  
9-11-13 [184]

**Tentative ruling:**

This is the trustee's motion to sell the real property commonly known as 1815 Garden Highway, Sacramento, California. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. The court notes that Wells Fargo Bank has filed a limited opposition to the motion.

For the guidance of the parties, the court issues this tentative ruling. The court is not prepared to grant the motion at this time because the motion was not properly served. The trustee seeks to sell the property free and clear of the liens of four different entities and the leasehold interest of another entity. Pursuant to Fed. R. Bankr. P. 6004(c) and 9014(b), those five entities were required to be served in accordance with Fed. R. Bankr. P. 7004; they were not. In the event all of those entities make an appearance at the hearing, the court will hear the matter; however, if any of them does not appear, the motion will not be granted.

The court notes also that the moving party served the notice of hearing only on the parties requesting special notice in this case at DNs 37 and 38, whereas they were required to be served with the motion and supporting papers, as well as the notice. LBR 9014-1(d)(4).

The court will hear the matter.

64. 13-31598-D-11 WOODBRIDGE AT PORTOLA,  
INC.

ORDER TO SHOW CAUSE